

(11)  
IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO,  
WESTERN DIVISION

FILED JUN 1985

EPA Region 5 Records Ctr.



257321

UNITED STATES OF AMERICA

Plaintiff,

v.

CHEM-DYNE CORPORATION, et al.,

Defendants.

STATE OF OHIO ex rel.  
CELEBREZZE,

Plaintiff,

v.

ROHM AND HAAS COMPANY, et al.,

Defendants.

Consolidated Civil Action  
Nos. C-1-82-840 and  
C-1-82-962

Chief Judge Carl B. Rubin

|          |         |
|----------|---------|
| Judge    | 4810    |
| Mag.     |         |
| Journal  |         |
| Motion # |         |
| Issue    | Amended |
| Card     |         |
| N/S      | 893     |
| Docketed | 28      |

FILED  
KENNETH J. MURPHY  
CLERK  
OCT 9 2 34 PM '85  
U.S. DISTRICT COURT  
SOUTHERN DIST. OHIO  
WEST DIV. CINCINNATI

CONSENT DECREE

This Consent Decree is entered by and between Robert G. Robson, Herbert A. Middendorff, Cindoco Products, Robert M. Wurzelbacher, Richard T. Wurzelbacher, and the American Society for Environmental Education, Inc. on the one hand (collectively referred to as "Assignors") and Allied Corporation, Ludlow Corporation, Astro Containers, Inc., C. W. Zumbiel Company, Sun Chemical Corporation, Structurlite Plastics Corporation, Frank Irely, Jr., Inc., Kipin Industries, Inc., World Pipe Service Company, the United States of America and the State of Ohio on the other hand (collectively referred to as "Assignees").

WHEREAS, Assignees have asserted claims or stated an intention to assert claims against Assignors for costs and damages in consolidated Civil Action No. C-1-82-840 and C-1-82-962 in the United States District Court for the Southern District of Ohio, Western Division ("the Chem-Dyne action"); and

WHEREAS, certain disputes and controversies have arisen between the parties regarding their respective rights and obligations, and the parties now desire to compromise and settle all claims, controversies and disputes between them on the terms set forth herein; and

WHEREAS, at relevant times herein, Assignors were insured under policies of insurance issued by the companies shown on Schedule A with the liability limits, dates of coverage and policy numbers for each policy shown thereon; and

WHEREAS, Assignors and Assignees acknowledge that if the claims and prospective claims against Assignors had proceeded to trial, an adverse judgment against Assignors in an amount greater than their liability insurance coverage could have resulted; and

WHEREAS, Assignors represent that they have demanded that their insurance carriers assume their defense and indemnify them for all claims and prospective claims against them by Assignees, but all such insurance companies have denied coverage and refused to defend Assignors, except that Aetna Casualty & Surety Company has provided a defense to Assignors but denied coverage; and Assignors further represent that, to the best of their knowledge, information and belief, they have complied with all terms and conditions of their

insurance policies, including but not limited to proper notice of the nature and pendency of Assignees' claims against them.

NOW, THEREFORE, it is mutually agreed as follows:

1. The total claim of the United States against Assignors is \$1,303,979 plus costs incurred after November 16, 1984. The total claim of the State of Ohio against Assignors is \$9,988,376. The total claims of all other Assignees against Assignors is \$2,878,000. The parties hereby agree to settle and compromise all such claims as follows: \$1,080,000 to the United States, \$5,250,000 to the State of Ohio and \$1,400,000 to all other Assignees. These settlements shall be satisfied in full by the Assignors' payments set out in Paragraph 2 below and their assignment of rights against their insurers as set out in Paragraphs 3 and 4 below.

2. Upon entry of this Consent Decree, Assignors will pay the total sum of One Hundred Seventy-Five Thousand Dollars (\$175,000) to Assignees as follows:

|                                   |    |             |
|-----------------------------------|----|-------------|
| United States of America          | -- | \$25,000.00 |
| State of Ohio                     | -- | \$25,000.00 |
| Allied Corporation                | -- | \$41,087.50 |
| Ludlow Corporation                | -- | \$24,337.50 |
| Astro Containers, Inc.            | -- | \$22,912.50 |
| C. W. Zumbiel Company             | -- | \$18,850.00 |
| Sun Chemical Corporation          | -- | \$ 5,187.50 |
| Structurlite Plastics Corporation | -- | \$ 3,625.00 |
| Frank Irely, Jr., Inc.            | -- | \$ 3,000.00 |
| Kipin Industries, Inc.            | -- | \$ 3,000.00 |
| World Pipe Service Co.            | -- | \$ 3,000.00 |

Payment to the United States shall be by check payable to "EPA Hazardous Substances Response Fund." Payment to the State of Ohio shall be by check payable to "Treasurer, State of Ohio." Payments to all other Assignees shall be by check payable to each Assignee as set out above.

3. Upon entry of this Consent Decree, Assignors hereby assign to Assignees all of their right, title and interest, if any, in all claims, demands and causes of action for indemnity that they may have against the insurance carriers named on Schedule A. Assignors hereby transfer and assign to Assignees any privilege which Assignors may have with respect to statements or reports furnished by them to their insurance carriers relating to the Chem-Dyne action, and Assignors further agree that they and their respective agents, officers, attorneys and employees will cooperate fully with Assignees in connection with any coverage disputes or in the event of any proceedings against Assignors' insurance carriers relating to such coverage disputes.

4. Assignors further agree to consent to and be bound by the terms and conditions of the Consent Decree by and between Assignees, Assignors and other parties in the Chem-Dyne action as "Premium Settling Defendants," as that term is defined in Paragraph XIV of such Consent Decree. As Premium Settling Defendants, Assignors shall have the full benefit of all releases set forth in Paragraph XIV; in addition, Assignees other than the State and the United States hereby assume any liability that may arise against Assignors under Paragraph XIV.C.2 for off-site disposal of waste

materials taken from the Chem-Dyne site, and it is agreed that Paragraph XIV.D. of such Consent Decree shall not apply to Assignors in their capacity as property owners.

5. Upon entry of this Decree and receipt of the payments and assignments referred to above, and upon entry of the Consent Decree referred to in Paragraph 3 above, Assignees shall dismiss their claims against Assignors with prejudice, all parties to bear their own costs.

6. This Consent Decree was negotiated and executed by the parties hereto in good faith and to avoid further expensive and protracted litigation and is a settlement of claims which were vigorously contested, denied and disputed as to validity and amount. The execution of this Consent Decree is not an admission of liability of any kind. Accordingly, it is agreed that this Consent Decree shall not be admissible in any judicial or administrative proceeding except as may be necessary to effectuate or enforce the terms of this Decree or otherwise as may be required by law.

7. Assignees hereby agree to give Assignors advance notice of any litigation instituted by them with respect to the assignments herein so as to permit Assignors to join in the litigation if they so desire.

BY THEIR COUNSEL, THE PARTIES ENTER INTO THIS CONSENT  
DECREE AND SUBMIT IT TO THE COURT, THAT IT MAY BE APPROVED AND  
ENTERED.


Approved and So Ordered:

  
Chief District Judge

ASSIGNORS:

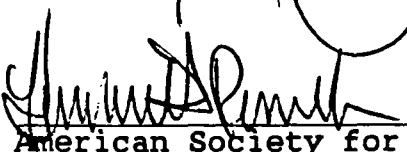
  
Robert G. Robson

  
Herbert A. Middendorff


  
Cindoco Products, a partnership,  
by Robert M. Wurzelbacher, partner

  
Richard T. Wurzelbacher

  
Robert M. Wurzelbacher

  
Counsel for  
American Society for Environmental  
Education, Inc.

ASSIGNEES:

  
Allied Corporation

<sup>21</sup>  
Thomas J. Jey, Counsel  
Ludlow Corporation

Thomas Jey, Counsel  
Astro Containers, Inc.

Thomas Jey, Counsel  
C. W. Zumbiel Co.

Thomas Jey, Counsel  
Sun Chemical Corp.

Thomas Jey, Counsel  
Structurlite Plastics Corp.

Carl T. Kuehl Counsel for Frank Irey, Jr.  
Frank Irey, Jr.

Carl T. Kuehl Counsel for Kipin Industries, Inc.  
Kipin Industries, Inc.

Carl T. Kuehl Counsel for World Pipe Service Co.  
World Pipe Service Co.

United States of America, by:

F. Henry Habicht II  
Assistant Attorney General  
Land & Natural Resources Division  
U.S. Department of Justice

Courtney M. Price by Richard M. Price  
Courtney M. Price  
Assistant Administrator for  
Enforcement and Compliance  
Monitoring  
U.S. Environmental Protection  
Agency

*Valdas V. Adamkus*

Valdas V. Adamkus  
Regional Administrator  
Region V  
U.S. Environmental Protection  
Agency

*Anthony J. Celebrezze, Jr.*

State of Ohio, by  
Anthony J. Celebrezze, Jr.  
Attorney General



SCHEDULE A

PRIMARY INSURANCE COVERAGE

| <u>Carrier</u>  | <u>Policy No.</u> | <u>Amt. of Coverage</u> | <u>Insureds</u> | <u>Dates of Coverage</u> |
|---|-------------------|-------------------------|-----------------|--------------------------|
| Royal Globe Ins. Co.  | PYB362093         | \$100,000 PD            | W               | 5/1/74 - 5/1/77          |
| Aetna C&S   | 68AL223211CCA     | \$100,000 PD            | RMW             | 12/5/74 - 12/5/77        |
| Royal Globe Ins. Co.  | PYR364995         | \$250,000 PD            | W               | 5/1/77 - 5/1/80          |
| Aetna C&S   | 68AL226358CCA     | \$100,000 PD            | RMW             | 12/5/77 - 12/5/78        |
| Aetna C&S   | 68GL0484CCA       | \$100,000 PD            | RMW             | 12/5/78 - 11/1/79        |
| Illinois Employers<br>of Wausua [Wausua<br>Surplus Lines<br>Underwriters] | 79GA22913A        | \$500,000 PD            | RMW             | 11/1/79 - 3/26/81        |
| Royal Ins. Co. of<br>America  | PYN489940         | \$250,000 PD            | W               | 5/1/80 - 5/1/83          |
| Old Republic Ins. Co.   | Z28157-1          | \$1,000,000 PD          | RMW             | 2/4/81 - 1/1/84          |
| rtford Ins. Co.   | 37C840651         | \$500,000 PD            | RMW             | 12/13/82 - 8/31/83       |
| Royal Ins. Co.<br>of America  | PYNC05530 (0)     | \$250,000 PD            | W               | 5/1/83 - 5/1/86          |
| Great Southwest   | GL125328          | \$1,000,000             | RMW             | 3/26/81-3/27/85          |

EXCESS INSURANCE COVERAGE

| <u>Name</u>                    | <u>Policy No.</u> | <u>Amt. of Coverage</u> | <u>Insureds</u> | <u>Dates of Coverage</u>      |
|--------------------------------|-------------------|-------------------------|-----------------|-------------------------------|
| CNA (Continental Casualty Co.) | RDU1247650        | \$1,000,000 PD          | W               | 3/20/73 - 3/20/76             |
| CNA (Continental Casualty Co.) | RDU2136785        | \$1,000,000 PD          | W               | 3/20/76 - 5/1/77              |
| CNA (Continental Casualty Co.) | RDU3568413        | \$2,000,000 PD          | W               | 5/1/77 - 5/1/78               |
| CNA (Continental Casualty Co.) | RDU4017150        | \$2,000,000 PD          | W               | 5/1/78 - 5/1/79               |
| CNA (Continental Casualty Co.) | RDU005214895      | \$2,000,000 PD          | W               | 5/1/79 - 5/1/80               |
| Canadian Universal Ins. Co.    | NXTPL21006        | \$500,000 PD            | RMW             | 11/1/79 - 11/1/80             |
| CNA (Continental Casualty Co.) | UMB006465818      | \$2,000,000 PD          | W               | 5/1/80 - 5/1/81               |
| Great Southwest Fire Ins.      | XL4240            | \$500,000 PD            | RMW             | 11/1/80 - 12/1/80             |
| Hanover                        | MLF-MLI-90-224    | \$800,000* PD           | RMW             | 12/1/80 - 12/1/81             |
| Home Ins. Co.                  | HEC-987-57-31     | \$800,000* PD           | RMW             | 12/1/80 - 12/1/81             |
| Great Southwest Fire Insurance | XL6526            | \$500,000 PD            | RMW             | 12/1/80 - 3/26/81             |
| Integrity Ins. Co.             | 15X108592         | \$5,000,000 PD          | RMW             | 3/26/81 - 1/1/82<br>- 8/31/83 |

| <u>Carrier</u>                       | <u>Policy No.</u> | <u>Amt. of Coverage</u> | <u>Insureds</u> | <u>Dates of Coverage</u> |
|--------------------------------------|-------------------|-------------------------|-----------------|--------------------------|
| Great American<br>Ins. Co.           | 2628897           | \$2,000,000 PD          | W               | 5/1/81 - 5/1/83          |
| Great American<br>Ins. Co.           | 608944900         | \$3,000,000 PD          | W               | 5/1/83 - 5/1/84          |
| Great American<br>Ins. Co.           | 608944901         | \$3,000,000 PD          | W               | 5/1/84 - 5/1/85          |
| Wausau Surplus<br>Lines Underwriters | XL300-0597        |                         |                 |                          |
| Wausau Surplus<br>Lines Underwriters | 81GA26627         |                         |                 |                          |
| Home Ins. Co.                        | HEC-1-19-84-99    |                         | RMW             |                          |